CRI/A/80/94

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

LITS'ITSO MATSELA	1st Appellant
MPAKAPAKA NTS'EKHE	2nd Appellant

v.

R E X	Defendant

J U D G M E N T

Delivered by the Hon. Mr. Justice W.C.M. Maqutu, Acting Judge on the 17th day of March, 1994.

This is an appeal against the judgment of the Magistrate for the district of Leribe. In that case the two appellants were charged with intentionally stealing the three oxen, the property or in the lawful possession of Moeti Malieletse on the 22nd August, 1988.

Both accused pleaded guilty. They were duly convicted and sentenced to 5 years imprisonment on the 29th August, 1988.

It has to be noted that stock-theft was one of the crimes which was included under Revision of Penalties Amendment Order No. 10 of 1988. This order was repealed in 1991.

The Appellant's trial took place with unusual speed having regard to circumstances that prevailed at the time.

This court has on several occasions warned Magistrates and Prosecutors that people charged with serious offences should be advised or even encouraged to have the services of a legal practitioner. Such people are not bound to do so, of course.

Akermann J.A. in Phomolo Khutlisi v. Rex C. of A (CRI) No.5 of 189 (unreported) dealing with the accused that are charged with serious offences said:

> "I would emphasise , however, the importance, in the administration of justice of the accused being informed at the commencement of the trial of his rights in regard to legal representation, a matter which was referred to by Lehohla J in L. Pulumo V. Rex CRI/T/27/88 (unreported).

In S. v. Mbonani 1988(1) SA .... at 196G-J Goldstone J. dealing with the question of legal representation noted the importance of legal representation:-

> "Especially where the charge is a serious one which may merit a sentence which could be materially prejudicial to the accused, such an accused should be informed of the seriousness of the charge and the possible consequences of a conviction."

The Appellants had initially appealed against sentence, but they had indicated that in their notice of appeal that they reserved, the right to file further grounds of appeal when the record of appeal was available.

Mr. Ramodibeli, Counsel for Appellants in his heads of argument submitted that the outline of facts by the public prosecutor did not disclose a commission of an offence in that it did not disclose an intention to steal. In as much as the cattle came into the hands of appellants covered by bewysee, the Crown was obliged to show that the Appellants knew the cattle were stolen. Nothing is said about he bewyses or how the police came to the conclusion that a criminal action had been committed by the accused.

I am indebted to Mr. Ramodibeli for his Heads of Argument and the decided cases quoted therein. They made the court's work pleasant and easy in preparing this judgment. His example if followed by all will improve the quality of the work of this court.

The Crown did not support conviction.

The court went over the record and this is what it discloses which connects the accused with the charge of theft as the police saw it:-

> "Both accused were driving the said animals for sale. On demand both accused produced some bewys and some police were not satisfied arrested them and drove them to Maputsoe Charge Office, where complainant identified them as his missing cattle.

The accused admitted the facts and were duly convicted and sentenced to 5 years imprisonment. There is no doubt that no crime of theft or the competent verdict of receiving stolen property knowing it to be stolen has not been disclosed. Nor even unlawful possession of stock in terms of Section 16 of Stock Theft Proclamation of 1921 as amended could have been a competent verdict. The reason being that it is not shown how the production of bewyses did not satisfy "some policemen" at the time or any any time. See Makeng Mpesi v. Rex 1967-70 LLR 112. Vital evidence (if the Crown had it at all) has been with-held from the Court. In Mapota Napo v. Rex 1971-73 LLR 5 details of what went on in the arresting authority's mind, the nature of suspicion raised by the circumstances and the accused explanation must be disclosed.

The case of R. v. Majola 1977 LLR 1, the accused had pleaded guilty and had been sentenced. That case was in many respects similar to this one. This Court per Cotran C.J.found itself compelled to quash conviction and sentence and release accused on review because:-

> "In this instance, it was impossible, either from the accused's plea, much less from the outline of the case to infer that th sheep were stolen."

Cullinan C.J. in R.v. Makotoko Khabo CRI/REV/130 and 180/90 (unreported) had occassion to deal with a plea of guilty and an unsatisfactory statement of facts by the Public Prosecutor and he had this to say:

> "I have repeatedly said the court should not be astute in drawing inferences from a statement of facts; the prosecution is relieved by a plea of guilty from adducing evidence; it is not relieved from the duty of stating facts, including every ingredient of the offence in clear unequivoval language."

Undoubtedly having regard to the aforegoing, there can be no doubt that what has transpired in these proceedings has prejudiced the Appellants.

The conviction and sentence are, therefore, set-aside and the appellants are acquitted. Their appeal deposits are to be refunded.

C.M. MAQUTU
ACTING JUDGE.

17th March, 1994.

For Appellant : Mr. Ramodibeli
For Crown: Mr. Ramafole.